

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.12 of 2017

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1. Poonam Devi, Wife of Late Shivakant Mishra, resident of Thakur Rakshpal Colony, North Hajipur, Ward NO. 13, Police Station Khagaria, District- Khagaria.

.... Appellant/s

Versus

1. Mithlesh Kuar, Son of Late Hiralal Kuar.
2. Dinesh Singh, Son of Devendra Singh, Both residents of Thakur Rakshpal Colony, Chitra Gupta Nagar, Police Station- Khagaria, District- Khagaria.
3. Charitar Mehta, Son of Banarsi Mehta, Resident of Kabir Nagar, Power House, Police Station- Chitragupta Nagar, District- Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

3 16-03-2017 Heard learned counsel for the parties.

This application for leave to appeal has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 in order to assail an order, dated 03.01.2017, passed by learned Second Additional Chief Judicial Magistrate, Khagaria in Complaint Case No. 698 (C) of 2006, whereby he has recorded acquittal of Opposite parties No. 1 to 3, who were put on trial on the charge of commission of offence punishable under Sections 323, 342, 354 and 379 of the Indian Penal Code.

I have perused the impugned order and considered the submissions advanced on behalf of the petitioner.

It is being contended on behalf of the petitioner that



the Court below has committed serious error of law in disbelieving the deposition of the Complainant (P.W.4) and discarding the evidence of P.W.2 and P.W.3 by not treating them an eye witness to the occurrence.

On perusal of the judgment and order sought to be assailed, I find that the findings of acquittal cannot be said to be perverse and contrary to the evidence adduced at the trial. In an appeal against acquittal unless it is shown that the findings are completely perverse, which has resulted into miscarriage of justice, this Court in appellate jurisdiction is not required to interfere. Acquittal of an accused in a criminal case strengthens the legal presumption of his innocence and unless it is shown that conviction could have been the only finding on the basis of the evidence at the trial, the Court is in appellate jurisdiction against such judgment of acquittal is not required to interfere.

On perusal of evidence of P. W.2 and PW 3, I find that PW-2 and PW-3 could not be treated to be eye witnesses since their evidence is based on what they had heard from the complainant (P. W.4).

I am not inclined therefore, to allow this leave to appeal.

This application is, accordingly, rejected.

ArunKumar/-

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(Chakradhari Sharan Singh, J)

